

Program Notice

FGIS-PN-04-02

11-13-03

REVIEW INSPECTION REGULATORY CHANGE

1. PURPOSE

This program notice announces a regulatory change that will allow interested persons to specify the quality factors that would be determined during a review inspection (reinspection, appeal inspection, or Board appeal inspection).

2. EFFECTIVE DATE

This action is effective November 28, 2003.

3. BACKGROUND

The Grain Inspection, Packers and Stockyards Administration (GIPSA) published a final rule in the Federal Register (68 FR 61326) on October 28, 2003, that allows interested persons to specify which official factor(s) should be redetermined during a review inspection. This action will improve the efficiency of the inspection service by reducing the time required to complete some reinspections, appeal inspections, and Board appeal inspections. This rulemaking action is only applicable to official grain inspection services provided under the United States Grain Standards Act.

4. POLICY

Requests for review inspections (reinspections, appeal inspections, or Board appeal inspections) may, upon request by an interested party, be limited to a review of one or more grade or condition factors. Official personnel may review any other quality factor to assure the accurate issuance of inspection certificates. Typically, this would involve a review of factors that were obviously reported in error or overlooked as part of the previous inspection and require correction before issuing the final results and the inspection certificate.

5. QUESTIONS

Direct any questions regarding this policy to the local GIPSA field office.

/s/ John Giler

David Orr, Director
Field Management Division

(Reverse Side of Page 1 - Attachment Follows)

7 CFR Part 1477—1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program

The 1998 Single-Year and Multi-Year Crop Loss Disaster Assistance Program was authorized by Sec. 1101 and 1102 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681). The program made payments to producers who incurred losses in quantity or quality of their crops due to disasters for losses to 1998 crops, or losses occurring in at least 3 years for which payments were received for the period 1994 through 1998.

7 CFR Part 1478—1999 Crop Disaster Program

The 1999 Crop Disaster Program was authorized by section 801 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Act, 2000 (Pub. L. 106–78, 113 Stat. 1135) and the Omnibus Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 113 Stat. 1501). The program made payments to producers who incurred losses in quantity or quality of 1999 crops due to disasters.

7 CFR Part 1479—Harney County Flood Assistance

The Harney County Flood Assistance program was authorized by section 207 of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 113 Stat. 1501). The program made payments to producers in Harney County, Oregon who suffered flood-related production losses during calendar year 1999.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866, has been determined to be not significant, and therefore has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

This rule does not affect any information collections.

List of Subjects

7 CFR Part 759

Direct payments to small hog operations, Reporting and recordkeeping requirements.

7 CFR Part 777

Disaster payments 1990 crops, Peanuts, Soybeans, Sugar beets, Sugarcane.

7 CFR Part 783

Disaster assistance, Grant programs—agriculture.

7 CFR Part 1411

Oilseeds, Production flexibility contracts.

7 CFR Part 1439

Animal feeds, Disaster assistance, Livestock, Reporting and recordkeeping requirements.

7 CFR Part 1447

Disaster assistance, Emergency assistance, Peanuts, Reporting and recordkeeping requirements.

7 CFR Part 1464

Imports, Importer assessments, Loan programs—agriculture, Price support programs, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 1469

Loan programs—agriculture, Mohair, Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1476

Cranberries, Loan programs—Price support programs, Reporting and recordkeeping requirements.

7 CFR Part 1477

Disaster assistance, Emergency assistance, Reporting and recordkeeping requirements.

7 CFR Part 1478

Disaster assistance, Emergency assistance, Reporting and recordkeeping requirements.

7 CFR Part 1479

Crop insurance, Disaster assistance, Floods, Reporting and recordkeeping requirements.

■ Accordingly, under the authorities cited in the preamble, 7 CFR chapters VII and XIV are amended as set forth below:

PARTS 759, 777, 783, 1411, 1447, 1469, 1476, 1477, 1478 and 1479—[REMOVED]

■ 1. Remove parts 759, 777, 783, 1411, 1447, 1469, 1476, 1477, 1478 and 1479.

PART 1439—[AMENDED]

■ 2. Remove and reserve part 1439, subparts C, E and I.

PART 1464—[AMENDED]

■ 3. Remove part 1464, subparts C, D, E and F.

Signed at Washington, DC, on October 8, 2003.

James R. Little,
Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA58

Review Inspection Requirements

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending the regulations under the United States Grain Standards Act (Act), as amended, to allow interested persons to specify the quality factor(s) that would be redetermined during a reinspection or appeal inspection for grade. Currently, reinspections and appeal inspections for grade must include a redetermination (*i.e.*, a complete review or examination) of all official factors that may determine the grade, are reported on the original certificate, or are required to be shown. Requiring that all quality factors be completely reexamined during a reinspection or appeal inspection is not efficient, is time consuming, and can be costly. Furthermore, a detailed review of the preceding inspection service is not always needed to confirm the quality of the grain. This action will allow interested parties to specify which official factor(s) should be redetermined during the reinspection or appeal inspection service.

EFFECTIVE DATE: November 28, 2003.

FOR FURTHER INFORMATION CONTACT: John Giler, Chief, Policies and Procedures Branch, Field Management Division, at his e-mail address: John.C.Giler@usda.gov, or telephone him at (202) 720–1748.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be nonsignificant for purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB). In addition, pursuant to requirements set forth in the Regulatory Flexibility Act

(RFA) (5 U.S.C. 601 *et seq.*), GIPSA has considered the economic impact of this rule on small entities and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

The rule will affect entities engaged in shipping grain to and from points within the United States and exporting grain from the United States. GIPSA estimates there are approximately 9,500 off-farm storage facilities and 57 export elevators in the United States that could receive official inspection services by GIPSA, delegated States, or designated agencies. Official inspection services are provided by 11 GIPSA field offices, 2 Federal/State offices, 7 GIPSA suboffices, 7 delegated States, and 49 designated agencies. Board appeal inspection services are provided by the Board of Appeals and Review. Under provisions of the Act, it is not mandatory for non-export grain to be officially inspected. Further, most users of the official inspection services and

those entities that perform these services do not meet the requirements for small entities. Even though some users could be considered small entities, this rule relieves regulatory requirements and improves the efficiency of official inspection services. No additional cost is expected to result from this action.

Requiring all reinspections and appeal inspections for grade to include a complete review of all official factors is not needed by applicants or other parties to transactions, or by official inspection personnel. Furthermore, this requirement often reduces the efficiency of providing official inspection services and may cause unnecessary delays in elevator operations. Allowing applicants to specify which official factor(s) are to be redetermined during the reinspection or appeal inspection service will improve the efficiency of the inspection service due to the time required to analyze all official quality factors.

Prior to developing this rule change, GIPSA considered restricting the action

to either appeal inspections or to reinspections. Our analysis was as follows:

1. *Restrict Action to Appeal Inspections.* GIPSA inspectors, who are assigned to specific GIPSA field offices, are the only ones who can perform appeal inspections. During the period of the analysis, GIPSA had fourteen field offices and less than 200 full-time GIPSA inspectors nationwide. Most domestic inspection services are provided by official agencies and not by GIPSA field offices. Therefore, applicants for service usually opt for a reinspection, rather than requesting an appeal inspection. (See Table 1.) The only applicants for service that would benefit from this alternative are those located at the few export ports where GIPSA does onsite original inspection services. GIPSA believes that restricting the action to only appeal inspections would adversely impact the cost benefits and the flexibility associated with the rule. Table 1 illustrates this point.

TABLE 1.—FULL-GRADE INSPECTION SUMMARY, FY 1994–2001

Year	Original inspections			Reinspections			Appeals GIPSA ²
	OAs ¹	GIPSA ²	Total	OAs ¹	GIPSA ²	Total	
FY 1997	1,828,519	119,907	1,948,426	36,698	4,844	41,542	3,140
FY 1998	1,861,718	117,267	1,918,985	29,012	5,058	34,078	3,443
FY 1999	1,750,211	117,916	1,868,127	26,046	4,529	30,575	3,103
FY 2000	1,717,625	110,114	1,827,739	19,778	4,515	24,293	3,103
FY 2001	1,706,817	102,295	1,809,112	22,073	4,797	26,870	3,105

¹ Total performed by all state and private official agencies.

² Total performed by all GIPSA field offices.

2. *Restrict Action to Reinspections.* Licensed inspectors employed by State or private official agencies perform most reinspections. GIPSA only performs reinspections at certain export port locations. GIPSA believes that if the action were limited to reinspections, more applicants for service could potentially benefit than limiting the action to appeal inspections. Some applicants, however, might be placed at a competitive disadvantage because their sales contracts require them to request appeal inspections on some or all original inspection services. Additionally, about ten percent of all reinspections are appealed. If the grading procedures for appeals are different from the preceding reinspection, the review inspection process is not similar for all levels of the review inspection process.

The review inspection process should provide all applicants the same opportunity for inspection services. Reinspection services and appeal

inspection services should be similar in scope and effect. For this reason, GIPSA decided to make the regulatory change that would favorably affect both the reinspection process and the appeal inspection process.

The cost savings of the proposed action on the grain industry could be very positive. Although it is impossible to estimate an exact dollar savings, the time spent waiting for inspection results could be reduced by at least 50 percent and could, in certain circumstances, exceed 90 percent. Since grain elevators often "idle" their load-out operations until the results of a reinspection or appeal are known, domestic shippers could save several hundred dollars in operation and demurrage costs on an average 100-car unit train. The savings for exporters could reach \$10,000 for some vessels. For example: If elevator X has a fixed operating cost of \$500 an hour and it takes an average of 30 minutes to perform a reinspection or appeal inspection, then each

reinspection or appeal will cost the elevator an additional \$250 in down time. If the time required to perform the reinspection or appeal is reduced to 15 minutes, the elevator saves \$125 per inspection due to the more efficient inspection service. These savings could be multiplied if the time saved on performing the reinspections or appeals allows the elevator to avoid or limit demurrage (*i.e.*, a fee assessed to the elevator for failing to complete the loading of a unit train or ship within a specified period). Currently, the demurrage for railcars can range up to \$50 per day per car. The demurrage on export vessels can reach \$10,000 a day.

The potential revenue impact of the action on GIPSA and official agencies should not be significant. In the long run, this proposed rule may encourage slightly more reinspection and appeal inspection services because of the increased efficiencies associated with the proposal. However, GIPSA does not believe that its net revenue will

significantly change. GIPSA routinely review the agency's revenue and cost of service as part of its ongoing fee review process. If inspection services and revenue from those services change significantly, GIPSA may determine a change in fees is needed and would do so as part of a fee proposal.

Executive Order 12988 and 12898

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administration procedures that must be exhausted prior to any judicial challenge to the provision of this rule.

Pursuant to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," GIPSA has considered potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group will be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. The final rule will apply in the same manner to all persons and groups whose activities are regulated, regardless of race, gender, national origin, or disability. This rule will have no effect on protected populations.

Information Collection and Recordkeeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements in part 800 have been previously approved by OMB and assigned OMB No. 0580-0013.

Background

On August 21, 2002, GIPSA proposed in the **Federal Register** (67 FR 54133) to revise the regulations under the United States Grain Standards Act (Act), as amended, to allow interested persons to specify the quality factor(s) that would be redetermined during a reinspection or appeal inspection for grade. This proposal required comments to be received on or before October 21, 2002. On October 23, 2002, GIPSA published in the **Federal Register** (67 FR 65048) a notice to extend the comment period to November 21, 2002.

GIPSA had proposed this action because requiring that all quality factors be completely reexamined during a reinspection or appeal inspection is not efficient, is time consuming, and can be

costly. Further, a detailed review of the preceding inspection service is not always needed to confirm the quality of the grain. GIPSA proposed that applicants for service should be allowed to specify the factor(s) that are to be redetermined as part of a reinspection or an appeal inspection service because it provides a more effective and more efficient inspection service and better meets the industry's needs. However, reinspections for grade, appeal and Board appeal inspections for grade may include a review of any pertinent factor(s), as deemed necessary by official personnel. This would assure the issuance of an accurate grade. GIPSA also solicited comments regarding the need to show a statement on the certificate that would identify which factors were determined during the review inspection(s) and which were determined on a preceding inspection. GIPSA did not propose to include a required statement as part of the proposal.

Comment Review

GIPSA received 7 comments regarding the proposed action. All comments supported the action. Two comments were from associations involved with graded commodities inspected under the authority of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). Although their comments supported the proposed change; they asked that GIPSA extend this action to include their graded products (rice and pulses). Rice and pulse inspection is provided under the provisions of the regulations contained in 7 CFR part 868. Since the proposed action involved a change to 7 CFR part 800 and did not address the regulatory provisions of part 868, GIPSA cannot effect a change as part of this action. However, GIPSA will consider such action as part of a separate rulemaking, if deemed appropriate.

GIPSA also received a combined comment from two trade associations that generally supported the proposed revisions with an exception. Their comment expressed a concern that there were no clarifying guidelines published to implement this change which may result in differing interpretations and applications among official agencies and GIPSA field offices. They urged GIPSA to simultaneously publish with the final rule clarifying instructions to official personnel specifying the conditions under which a review of other pertinent factors (factors not requested by the applicant for service), as deemed necessary by official personnel.

In discussing the merits of the proposed rulemaking action, GIPSA

noted that while various industry groups had indicated that requiring all factors to be completely reviewed on reinspections and appeal inspections is usually unnecessary and costly, others indicated that the regulation must not allow official personnel to overlook questionable factor results just because the applicant for inspection did not request that certain factors be redetermined during the course of a review inspection. We noted that both of the views had merit and that all official inspections must be accurate. We pointed out that reinspections for grade, appeal and Board appeal inspections for grade could include a review of any pertinent factor(s), as deemed necessary by official personnel. If there was an indication that a factor or factors may have been misgraded or overlooked, then the factors in question would be redetermined. The current policy for review inspections addresses this issue. GIPSA will distribute a program notice to announce the final action and reaffirm the policy.

GIPSA received only one comment regarding the proposal not to use a statement on an official inspection certificate that identifies which factors were reinspected. The comment supported GIPSA's view to not include this type of statement on the inspection certificate.

Final Action

Accordingly, GIPSA is revising the regulatory text in 7 CFR 800.125 to allow requests for reinspections to be limited to one or more grade or condition factors, and is revising the regulatory text in 7 CFR 800.135 to allow requests for appeal inspections to be limited to one or more grade or condition factors.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grains.

PART 800—GENERAL PROVISIONS

■ For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

■ 1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

■ 2. Section 800.125 (b) is revised to read as follows:

§ 800.125 Who may request reinspection services or review of weighing services.

* * * * *

(b) *Kind and scope of request.* A reinspection or review of weighing service is limited to the kind and scope of the original service. If the request